



Agenda Item No. 2

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole
Meeting of November 13, 2009

From: Joseph M. Wire, Auditor-Controller
David J. Miller, Attorney
Celia G. Kupersmith, General Manager

Subject: **APPROVE ACTIONS RELATIVE TO THE ADOPTION OF A
PROCUREMENT POLICY AND IMPLEMENTATION OF ASSEMBLY
BILL 116 REGARDING PROCUREMENT ACTIVITIES**

Recommendation

The Rules, Policy and Industrial Relations Committee recommends that the Board of Directors approve the following actions relative to procurement activities:

1. Adopt a restated Procurement Policy as set forth in Attachment A that incorporates recent changes to state law (AB 116) regarding the procurement of equipment, supplies or materials, and that confirms current procurement policies; and
2. Authorize the General Manager to take further actions as may be necessary to give effect to the restated Procurement Policy, including updating the Procurement Manual and making subsequent revisions to the Procurement Manual, if necessary, to implement changes in applicable laws and regulations and best procurement practices, with the understanding that changes that represent a deviation from the Procurement Policy must be approved by the Board of Directors.

Summary

Assembly Bill (AB) 116, introduced by Assembly Member James Beall and signed into law by the Governor on October 11, 2009, amends the statutory rules for the District's procurement of equipment, supplies, and materials. The District officially took a position of support for these procurement reforms, which grant greater discretion and flexibility to use the method of procurement that is most appropriate for the District's needs. The changes were initiated by the Santa Clara Valley Transportation Authority and were also endorsed by the San Mateo County Transit District and the Alameda-Contra Costa Transit District. The legislation takes effect on January 1, 2010.

AB 116 impacts District procurement rules in four ways:

First, the threshold for using formal competitive bidding and a lowest responsible bidder basis of award has been raised. Instead of applying to procurements of equipment, supplies and materials that exceed \$20,000, AB 116 changed the threshold to procurements exceeding \$100,000.

Second, the legislation grants the discretion to the District to award contracts for equipment, supplies or materials over \$100,000 either on a lowest responsible bidder standard, or to the bidder who submits the proposal that provides the “best value” to the District. Best value is defined in the new law as the “overall combination of quality, price, and other elements of a proposal that, when considered together, provide the greatest overall benefit in response to the requirements described in the solicitation documents.”

Third, notice of the request for bids may now be satisfied by posting the notice on the District’s website coupled with one publication in a newspaper of general circulation at least 10 days before the deadline for bids. The current statutory notice requirement requires publication for two successive weeks in a newspaper of general circulation, and does not recognize the prevalence of website communication.

Finally, when the estimated expenditure for equipment, supplies, or materials is between \$2,500 and \$100,000, the new law requires that the District obtain, when practical, a minimum of three quotations, either written or oral, that permit comparison on the basis of prices and other terms. This is the same process the District currently uses for procuring goods costing less than \$20,000.

AB 116 does not alter in any way the rules for awarding public works/construction contracts, or contracts for alteration, repair, or maintenance of ferries.

District staff is in the process of revising the District’s procurement procedures to incorporate these changes. Given the passage of time, it would be desirable to restate the District’s general procurement policies overall. Accordingly, the restated Procurement Policy attached hereto as Attachment A contains all of the major procurement policies that the Board has previously adopted, with revisions to reflect the changes under AB 116. Specifically, the following policy amendments to incorporate AB 116 are recommended:

1. Formal competitive bidding procedures using the lowest responsible bidder standard as the basis of award will typically apply to purchases of equipment, supplies, or materials over \$100,000, but a “best value” approach may be used in circumstances where it is determined to be in the best interest of the District. “Best value” means a process in which the overall combination of quality, price, and other elements such as reliability, standardization, vendor track record, warranty, and life cycle costs are considered to determine which proposal provides the greatest overall benefit to the District. On a case-by-case basis, and in particular when a procurement involves a combination of goods and services, the District Procurement Office, in consultation with the project manager of the project or the department issuing the solicitation, shall make the determination of whether a “best value” approach is in the best

interest of the District. In such circumstances, the determination will be documented in writing and a Request for Proposals competitive negotiations process will be utilized.

2. An informal procurement method may be utilized for the purchase of equipment, supplies, or materials when the estimated expenditure is between \$2,500 and \$100,000. To the extent practicable, such a method shall involve obtaining a minimum of three quotations, either written or oral, that permit prices and other terms to be compared. Adequate outreach will be made to ensure open and free competition, and that small businesses, Disadvantaged Business Enterprises (DBEs), and local vendors are notified of contract opportunities. A solicitation list of interested vendors based upon a review of trade sources, lists of certified DBEs, and vendors that have registered with the District to receive notice of contract opportunities will be developed. The District's informal bidding procedures using a lowest responsible bidder standard for bid comparison shall normally be followed, unless it is determined in writing that it is in the District's best interest to apply a "best value" approach.

In general, the "best value" approach will be considered where the procurement does not only involve the purchase of specific equipment, materials, or supplies, but also involves services or customization, or where the quality, fitness of purpose, reliability, standardization, vendor track record, warranty, life cycle costs, or other qualitative elements may take priority over price. The trend towards a qualitative basis for award began in 1990, when legislation was first passed to allow the District to use competitive negotiations for the procurement of computers, telecommunications equipment, automated toll and fare collection equipment and other equipment undergoing rapid technological change. That law was expanded in 1999 to include the procurement of railcars, buses, and ferries. It has been successfully applied by the District to convert to the FasTrak® electronic toll collection system; to acquire the Advanced Communication and Information System; to implement the Asset Management and Vehicle Fluid Management Systems; and in the last procurement of District buses.

For the procurement of equipment, supplies and materials under \$100,00, the District's informal bidding process, currently used for procurements under \$20,000, will generally apply, except in circumstances where the "best value" method of award is in the District's best interest. The informal process will still require written documentation, outreach to potential vendors to ensure adequate competition, and the appropriate oversight and approvals. Procurement staff will continue to follow all rules and policies for all District procurements. The District's new computerized procurement tracking system will document all purchases over \$2,500. The new procurement tracking system will ensure that the appropriate approvals are obtained from the proper authority: 1) Department Head/Front-Line Management staff approval for procurements under \$10,000; 2) Officer, Deputy General Manager or Procurement and Retail Operations Director approval for procurements under \$20,000; and 3) General Manager approval for procurements under \$100,000.

Once AB 116 takes effect in January 2010, it will not be necessary for the District to use the formal competitive bidding process for approximately 20 contracts projected to cost between \$20,000 and \$100,000, and anticipated to go out for bid during the second half of FY 2009/2010. While District staff will still need to follow the informal bidding process for these contracts, this process is much less cumbersome and less time consuming than the formal competitive bidding process, thereby, significantly streamlining the procurement process and increasing overall District productivity and responsiveness.

The proposed Procurement Policy also addresses the method for procuring service contracts, which are not subject to statutory competitive bidding requirements. Currently, the District processes call for service contracts over \$25,000 to be awarded using a formal competitive negotiations process. Federal best procurement practices set \$100,000 as an appropriate threshold for requiring a formal competitive negotiation process. Below that level, an informal process is recommended. Consistent with the policies behind AB 116 and federal procurement guidelines, service contracts in the \$25,000 to \$100,000 range would be awarded using informal solicitation, rather than a formal Request for Proposals process. District staff will solicit proposals by oral or written request, from an adequate number of qualified sources, and with appropriate outreach to DBEs, small and local firms, as well as to those firms that are registered with the District to receive notice of solicitations. Proposers must submit a written proposal for evaluation by District staff, based upon specified criteria. A few service contracts, such as the Employee Assistance Program and Conflict Resolution Training, are projected to cost between \$25,000 and \$100,000 and are anticipated to go out for competitive negotiations during the second half of FY 2009/2010. The informal solicitation process would apply to these contracts. Like the informal bidding process, this process is much less cumbersome and less time consuming than the formal competitive negotiation process. The Procurement staff will follow strict guidelines, such as adhering to Procurement Manual and checklists, documenting the selection criteria, completing proposers' rating sheets, and obtaining the necessary approvals to ensure open and fair competition, proper communications, and checks and balances for every contract.

Assuming that the Board adopts the attached restatement of Procurement Policy incorporating the AB 116 modifications, the General Manager will implement revisions to the District's Procurement Manual. The Procurement Manual, adopted by the Board in 2001 and last revised in 2008, contains detailed procedures that track the entire process through contract administration and closeout. Occasionally these processes need to be refined or updated to reflect changes in the District's organizational structure and operations, or to maximize the Manual's effectiveness for the Purchasing Department and the divisions that it serves. The nature of these refinements do not implicate fundamental procurement policy. Thus, it is recommended that the Board authorize the General Manager to take future actions as may be necessary to give effect to the restated Procurement Policy, including the issuance of subsequent revisions to the Procurement Manual if necessary to implement changes in applicable laws and regulations and best procurement practices. Changes in the Procurement Policy, in contrast, will continue to require Board authorization and approval.

Fiscal Impact

There is no direct fiscal impact associated with these recommended changes. It is anticipated that the streamlining of the procurement process will allow staff to perform the procurement functions in a more efficient and timely manner and will increase overall District productivity and responsiveness.

Attachment A: Proposed Procurement Policy

**PROCUREMENT POLICY
GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT**

The Golden Gate Bridge, Highway and Transportation District is a political subdivision of the State of California, organized pursuant to California Streets and Highways Code Section 27000 et seq. and governed by a nineteen member Board of Directors. The procedures governing procurements of the District derive from the District’s enabling legislation, the California Public Contract Code, Rules of the Board of Directors, and federal law. In addition, certain standards, regulations, orders of the United States Office of Management and Budget, and requirements for grants-in-aid to local governments mandated by the United States Department of Transportation, Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) apply to the District in connection with contracts financed in whole or in part with federal funds. In the event of a conflict between the District’s Procurement Policy and local, state or federal law, such local, state or federal law shall supersede this Procurement Policy.

A. Goals

The District Procurement Policy is guided by six basic goals, namely:

1. To promote the greatest economy and efficiency for the District;
2. To provide safeguards to maintain a procurement system of quality and integrity;
3. To instill public confidence in the procurement process of the District and adherence to proper standards of conduct by all District personnel;
4. To ensure fair and equitable treatment for all vendors who seek to deal with the District, including Disadvantaged Business Enterprises (“DBEs”);
5. To foster maximum open and free competition in the expenditure of public funds; and
6. To maintain procurement policies and procedures to ensure compliance with applicable local, state, and federal laws and regulations.

Based on these goals and general principles of public sector procurement, the following set of procurement and contracting policies have been developed.

B. Conflicts of Interest

No director, officer, employee or agent of the District shall participate in any procedure, task, or decision relative to initiation, evaluation, award, or administration of a contract if a conflict of interest, real or apparent, exists. Such a conflict of interest arises when (a) the director, officer, employee or agent, (b) any member of his or her immediate family, (c) his or her business associate, or (d) an organization which employs, or which is about to employ, any of the above described individuals has a financial or other interest in a firm that participates in a District procurement process or that is selected for a contract award. The standards governing the determination as to whether such an interest exists are set forth in Sections 1090, 1091, and 1091.5 of the California Government Code and the California Political Reform Act.

C. Methods of Procurement

1. All purchases and contracts, whether by informal bidding, formal bidding or proposals, shall be made on a competitive basis to the greatest extent practicable.
2. The method of procurement, such as micro-purchases, informal bids or proposals, formal competitive bidding, requests for proposals, etc., shall be appropriate for the type of project or procurement and shall be in the best interest of the District.
3. Formal competitive bidding must be used for construction, repair, maintenance, alteration, and similar work whenever the estimated expenditure for such work exceeds \$5,000 or more, and vessel repair, alteration, or maintenance work whenever the estimated expenditure for such work exceeds \$20,000. Alternative methods of procurement may be permissible if authorized by state law.
4. Formal competitive bidding should be used when purchasing equipment, supplies, or materials over \$100,000, but a “best value” approach may be used in circumstances where it is determined to be in the best interest of the District. “Best value” means a process in which the overall combination of quality, price, and other elements such as reliability, standardization, vendor track record, warranty, and life cycle costs are considered together to determine which proposal provide the greatest overall benefit to the District. On a case by case basis, and in particular when a procurement involves a combination of goods and services, the District Procurement Office, in consultation with the project manager or the department issuing the solicitation, shall make the determination of whether a “best value” approach is in the best interest of the District. In such circumstances, the determination will be documented in writing and a formal competitive proposal process will be utilized.
5. An informal procurement method may be utilized for the purchase of materials, equipment, supplies, or services when the estimated expenditure is between \$2,500 and \$100,000. To the extent practicable, such a method shall involve obtaining a minimum of three quotations, either written or oral, that permit prices and other terms to be compared. Adequate outreach will be made to ensure open and free competition, and that small businesses, Disadvantaged Business

Enterprises, and local vendors are notified of contract opportunities. A solicitation list of interested vendors based upon a review of trade sources, lists of certified DBEs, and vendors that have registered with the District to receive notice of contract opportunities will be developed. The District's informal bidding procedures using a lowest responsible bidder standard for bid comparison shall normally be followed for the purchase of materials, equipment, or supplies, unless it is determined in writing that it is in the District's best interest to apply a "best value" approach, in which event, qualitative factors in addition to price may be considered in making an award.

6. Formal competitive proposals, which consider and evaluate factors in addition to price, will be used to retain professional services or certain specialized equipment, including rolling stock, when the estimated expenditure exceeds \$100,000. Specialized State and federal laws will apply to the procurement of architecture and engineering services regardless of the estimated expenditure.
7. The use of appropriate intergovernmental agreements is encouraged in order to reduce duplicative effort and to achieve cost economies.

D. Procurement Documentation and Consideration of Bids and Proposals

1. Formal competitive bidding requires preparation of bid documents that clearly set forth all requirements, which must be fulfilled in order for the bid to be responsive, and advertisement in accordance with legal requirements. An award, if made, will be to the lowest responsive and responsible bidder.
2. Formal competitive proposals, including the "best value" approach, require issuance of Requests for Proposals, which clearly set forth all the requirements, and state the qualitative factors in addition to price, which will be used to evaluate and rank the Proposals. An award, if made, will be to the proposer receiving the highest consensus ranking, subject to successful negotiations with the District.
3. Any and all bids or proposals may be rejected by the District if it is in the District's best interest to do so.
4. The District may only contract with contractors who are trustworthy and are qualified and possess the ability to perform successfully under the terms and conditions of the proposed procurement.

E. Execution of Contract Documents

1. All District contracts and amendments will be in writing and executed prior to beginning performance under the contract.
2. The General Manager may execute all contracts on behalf of the District that are duly approved within the General Manager's authority. The President of the Board of Directors will sign contracts and leases that require approval by the Board, unless otherwise delegated to the General Manager.

F. Disadvantaged Business Enterprise Program

The District is committed to and has adopted a Disadvantaged Business Enterprise (“DBE”) Program for DBE participation in District contracting opportunities in accordance with 49 Code of Federal Regulations (CFR) Part 26, effective June 22, 2001, as amended. It is the policy of the District to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of U.S. Department of Transportation assisted and District contracts. It is the intention of the District to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to the District’s construction, procurement and services activities.

G. General Manager’s Procurement Authority

1. The General Manager or his or her designee may award and execute agreements and leases for equipment, supplies, materials, services or construction when the amount to be paid by the District does not exceed \$100,000, inclusive of any change orders. A report summarizing the transactions made within the General Manager’s authority shall be presented to the Board of Directors on a periodic basis, no less than quarterly.
2. The General Manager may award contracts over \$100,000, for the routine replacement of equipment, supplies and materials that result in a defined product, with the understanding that said equipment, supplies and materials contracts should not have a policy impact and provided that such procurements are included in the District’s approved annual budget (examples of such contracts to include, but not be limited to: computers, compressors, printing of transit system timetables and guides, trucks, fuel and dry-docking).
3. For procurements not subject to paragraph 2, above, the Board of Directors shall approve the award of all contracts and leases when the amount to be paid by the District exceeds \$100,000.
4. The General Manager is authorized to approve change orders to contracts if all of the following criteria are met: (a) the change order can be funded within the contract contingency; (b) total change orders for the contract cumulatively do not exceed ten percent (10%) of the original contract price; and (c) the change order does not exceed \$50,000. All other change orders shall be approved by the Board of Directors.
5. Any changes in the General Manager’s Procurement Authority may only be made by the Board.
6. The General Manager is authorized to delegate to managers or other employees the responsibility and authority to approve purchases within the General Manager’s procurement authority, which delegation must be in writing, include defined monetary limits; be consistent with this Procurement Policy and be subject to the rules and procedures in the Procurement Manual.

H. Protest Procedures

Bidders may protest contracts that are let through formal competitive bidding or competitive negotiations. The General Manager is authorized to review and determine protests concerning contracts awarded within the General Manager's procurement authority. Bid protests for all other contracts not within the General Manager's procurement authority will be reviewed and determined by the Board of Directors upon recommendation by the General Manager and the District's Attorney. All protests will be in accordance with the written procedures set forth in the Procurement Manual.

I. Contract Administration

The District shall administer all contracts to ensure that contractors conform with the terms, conditions, and specifications of all contracts and to ensure all purchases are received in a timely manner. Each contract file shall contain documentation concerning the contract administration, including, but not limited to, monitoring of the contract budget, change orders and final disposition. Undocumented actions on all contracts must be committed to written memoranda and promptly included in the contract file.

J. Emergency Contracts

The General Manager has been authorized by the Board of Directors to take all necessary and proper measures in emergency conditions to keep the Golden Gate Bridge and approaches open for public transportation at all times and to maintain bus and ferry public transportation systems in operation. When emergency conditions do not permit a delay resulting from a competitive solicitation for bids, the General Manager is authorized to make emergency purchases without giving notice for bids. The General Manager shall promptly report on the reasons and necessity for proceeding without a competitive solicitation for bids to the Board of Directors at the next available meeting (not later than 14 days) after the emergency action is taken. Board approval is required for any contract in excess of \$100,000, and shall be obtained as soon as it is practicable to do so

K. Sole Source

Regardless of the estimated cost of the procurement, the District is not required to engage in the competitive bidding process, either formal or informal, when procuring materials, equipment, supplies or services for which there exists only a sole source of supply. If more than one distributor of a product is available, the product is not exempt from competitive bidding as a sole source. A sole source decision is not permitted merely upon the grounds that the source demonstrates technical or administrative superiority, is the most convenient, or shows superior performance potential at lower costs. In all cases, the District must verify that the particular procurement meets the definition of a sole source and the District must perform a cost or price analysis to determine the reasonableness of the price of the sole source.

L. Intergovernmental Agreements

To foster greater economy and efficiency, the District may avail itself of state and local intergovernmental agreements for procurement or use of common goods and services. Joint procurements, state cooperative purchasing programs, and assignment of existing contract rights (“piggyback” procurements) with other public agencies may be used when consistent with applicable state and federal statutory or grant requirements.

M. Discretion to Waive the Competitive Process

The Board of Directors, or the General Manager for procurements within the General Manager’s procurement authority, may waive the requirements for formal competitive bidding or other procedures set forth in this Procurement Policy when permissible under applicable law and when a determination is made that the best interests of the District will be served. For example, if after rejecting bids received pursuant to formal competitive bidding, the Board of Directors finds by a two-thirds vote that procurement of the equipment, supplies or materials may be purchased at a lower price on the open market, the District may proceed to purchase the equipment, supplies or materials in the open market without formal bidding, as authorized by Public Contract Code Section 20917. In circumstances where services are needed on an expedited basis that do not permit the time required for the RFP process, the General Manager may waive such procedures, provided there is adequate documentation of the need for such services. Finally, under unusual circumstances, when a determination is made that compliance with the requirements for formal competitive bidding would be unavailing and not in the District’s best interests, such requirements may be waived. These circumstances shall be evaluated on a case-by-case basis, in consultation with the District’s Attorney, and keeping in mind the fundamental principles of procurement set forth in this Policy.

N. Disposal of Surplus Property

1. The General Manager shall determine the manner of disposition of surplus supplies, equipment and materials whose estimated value at the time of the original purchase does not exceed \$100,000. The Board of Directors shall approve the disposition of any item having an original acquisition cost greater than \$100,000.
2. The method of sale or disposition of any surplus or scrap items shall depend upon the nature of the items. Such methods may include: (1) transfer or sale to other public agencies, (2) trade-in as part of a new procurement, (3) sale by auction, advertisement for sealed bids, or negotiation, or (4) where appropriate, proper recycling or disposal.

O. Revenue Generating Contracts/Concessions

To the extent they are not otherwise governed by District policies, concession agreements are contracts where the District grants permission to use District facilities or property to vendors to sell products or services, for which the District receives a percentage of the proceeds and/or a flat rate of compensation. Generally, these arrangements are at no direct cost to the District.

Where it is determined that a number of potential vendors are available to provide similar products or services, a competitive negotiations procedure should be followed, and award made to the highest ranked proposer, taking into consideration the economic return to the District, quality of the product, service and experience of the vendor.

When the RFP has an anticipated value greater than \$100,000 (including options) and either involves a new concession activity or program, or involves policy-sensitive or controversial activities or programs, the Board shall approve soliciting proposals for the concession before the RFP is circulated.

P. Implementation

This Procurement Policy sets forth the standards and methods to be followed by the District in obtaining goods and services. Through Board Resolutions 2001-163 and 2008-11, the District Board has adopted a Procurement Manual that sets forth implementing guidelines and procedures consistent with applicable law, and best procurement practices. The General Manager shall have the authority to maintain and update as necessary the Procurement Manual to give effect to this Procurement Policy and may make subsequent revisions if necessary to implement changes in applicable laws and regulations and best procurement practices such as FTA Best Practices Manual, Caltrans Local Programs Procedures Manual, American Public Transit Association guidelines and standards, or other well accepted external references. Changes that represent a deviation from this District Procurement Policy must be approved by the Board of Directors. All District staff with responsibility for procurement activities shall be trained in, and adhere to, this Procurement Policy and the Procurement Manual.